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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: 

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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 **In the Matter of the Seizure of:**

14 Any and all funds held in Republic
15 Bank of Arizona Account(s) xxxx1889,
xxxx2592, xxxx1938, xxxx2912, and,
16 xxxx2500,

17 And all consolidated cases.
18

Case No. 2:18-cv-6742-RJK (MAAx)

Consolidated with Case Nos.: 18-MJ-00712;
18-MJ-00713; 18-MJ-00715; 18-MJ-00716; 18-
MJ-00718; 18-MJ-00719; 18-MJ-00720; 18-
MJ-00721; 18-MJ-00723; 18-MJ-00724; 18-
MJ-00751; 18-MJ-00797; 18-MJ-00798; 18-
MJ-00996; 18-MJ-00997; 18-MJ-01427; and
18-MJ-1863

**UNOPPOSED APPLICATION FOR
ORDER UNSEALING IN THE MATTER
OF SEIZURE OF: ANY AND ALL FUNDS
HELD IN REPUBLIC BANK OF ARIZONA
ACCOUNTS XXXX1889, XXXX2592,
XXXX1938, XXXX2912, XXXX2500**

ORIGINAL

1 Claimant James Larkin hereby applies for an Order unsealing the above-captioned
2 matter. This application is based on the strong presumption of public access to judicial
3 records, *Foltz v. State Farm*, 331 F.3d 1122, 1137 (9th Cir. 2003), the attached Declaration
4 of Kenneth M. Miller, and this Court's entire file.

5
6 Dated: August 15, 2018

BIENERT, MILLER & KATZMAN, PLC

7 By: /s/ Kenneth M. Miller

8 Thomas H. Bienert

9 Kenneth M. Miller

10 Anthony R. Bisconti

11 Attorneys for James Larkin
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DECLARATION OF KENNETH M. MILLER

I, Kenneth M. Miller declare as follows:

1. I am an attorney licensed to practice before this Court. I, along with Thomas H. Bienert, Jr. and Anthony Bisconti, represent Claimant James Larkin in this matter. I have personal knowledge of the following.

2. On August 1, 2018, we filed a Notice of Motion and Motion to Vacate or Modify Seizure Warrants (the "Motion"), a Notice of Related Cases, an Application to File Oversized Brief, a Request for Judicial Notice, and an Application to File Under Seal, on behalf of Claimant Larkin.

3. On August 3, 2018, the Honorable Patrick J. Walsh, United States Magistrate Judge, held a telephonic hearing on the Motion. During the hearing, Judge Walsh stated that the various cases identified in Claimant's Notice of Related Cases would be consolidated and that the other Claimants identified in the motion could file joinders to the motion. Further, Judge Walsh:

- a. Observed that "this matter was unsealed on May 16, 2018." See Criminal Minutes, attached as Exhibit A.
- b. Granted Claimant's application to file under seal and ordered that redacted versions of Claimant Larkin's filings be publicly filed by August 8, 2018. *Id.*
- c. Ordered the government to file its Opposition by August 17, 2018, Claimant Larkin to file its Reply by August 24, 2018, and set a hearing for August 29, 2018. *Id.*
- d. Granted Claimant's application to file an over-sized brief. See signed Order, attached as Exhibit B.

4. On August 6, 2018, I was informed in a telephone call from Chris Sawyer and Vangy Levario, from the United States District Court's Clerk's Office, that the case had been reassigned to the Honorable Gary R. Klausner, United States District Court,

1 and assigned case number CV 18-6742-RGK (MAA). I was also informed that all of
2 Judge Walsh's prior Orders were still in effect.

3 5. On August 8 and 9, 2018, I caused redacted versions of the previously filed
4 documents to be filed with the Court, pursuant to Judge Walsh's August 3, 2018, Order.
5 However, we were unable to publicly file these documents. Instead, these documents
6 were manually filed under seal because, my office was informed, the entire case remained
7 under seal.

8 6. On August 10, 2018, I received an email from Ms. Sharon L. Williams,
9 Courtroom Deputy to Judge Klausner, that "the dates set by Magistrate Judge Walsh
10 are vacated and will be reset by the Court." However, my firm has not received any
11 notice that Judge Walsh's other Orders have been vacated. On August 14, 2018, I was
12 informed via an email from Ms. Williams that this Court set a hearing on this matter for
13 September 10, 2018 at 9:00 a.m. Claimant and counsel will be prepared to argue the motion
14 at that time.

15 7. As specifically relates to this Application, my office has not received any
16 notice that the Orders unsealing the civil seizure warrants and supporting affidavits that
17 Judge Walsh signed have been vacated. See Request for Judicial Notice, Under Seal, at
18 Exs. 1-29. Likewise, we have not received any notice that Orders unsealing the civil
19 seizure warrants and supporting affidavits signed by other Magistrate Judges have been
20 vacated. *Id.* at Exs. 30-35. Accordingly, counsel for Claimant James Larkin submits
21 that an Order unsealing this case is appropriate.

22 8. I discussed this Application with Assistant United States Attorney John
23 Kucera on August 14, 2018. He indicated that the government has no objection to the
24 case itself (18-CV-06742-RGK) being unsealed. However, it should be noted that two
25 affidavits at issue have not yet been unsealed. Those are in case numbers 18-MJ-01427
26 or 18-MJ-1863. The government has indicated that it does not object to unsealing the
27 search warrant application for 18-MJ-01427, but the government continues to object to
28 unsealing the search application in 18-MJ-1863. The government does not object to the
29 case itself (18-CV-06742-RGK) being unsealed.

1 I swear under penalty of perjury of the laws of the United States of American that the
2 foregoing is true and correct.

3 Executed on this 15th day of August, 2018, in San Clemente, California.

4 /s/ Kenneth M. Miller
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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES-GENERAL

Case No.: MJ 18-722

Date: August 3, 2018

Title: United States of America v. Any and all funds held in Republic ank of Arizona Accounts:
xxxx1889; xxxx2592; xxxx1938; xxxx2912; and xxxx2500

PRESENT: THE HONORABLE Patrick J. Walsh
UNITED STATES MAGISTRATE JUDGE

Christianna Howard
Deputy Clerk

Courtsmart
Court Reporter / Recorder

N/A
Tape No.

ATTORNEYS PRESENT FOR PLAINTIFF:
John Kucera, AUSA

ATTORNEYS PRESENT CLAIMANT(S):
Thomas Bienert
Ken Miller
Tony Bisconti

PROCEEDINGS: (TELEPHONIC CONFERENCE)

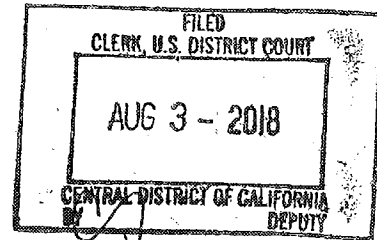
Counsel make their appearances. The Court and counsel discuss the pending Motion to Vacate or Modify Seizure Warrants received by the Court on August 1, 2018. Pursuant to the docket, this matter was unsealed on May 16, 2018. The Court **grants** claimants' Application to File Under Seal. Redacted versions shall be filed with the Court **no later than August 8, 2018**. An Opposition to the Motion to Vacate or Modify Seizure Warrants is due **no later than August 17, 2018**. A Reply is due **no later than August 24, 2018**. A hearing will be held on **August 29, 2018, at 1:30 p.m.** in Courtroom 790, on the 7th Floor of the Roybal Federal Building and Courthouse, located at 255 E. Temple Street, Los Angeles.

cc: Counsel of Record

: 20

Initials of Deputy Clerk ch

EXHIBIT B



Thomas H. Bienert, Jr., State Bar No. 135311
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Attorneys for James Larkin

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV18-6742-RGK (MMA)

In the Matter of the Seizure of

**Any and all funds held in Republic
Bank of Arizona Account(s)
xxxx1889, xxxx2592, xxxx1938,
xxxx2912, and xxxx2500.**

Case No. 18-MJ-00722

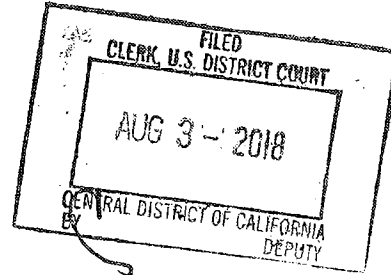
Notice of Related Cases filed for: 18-MJ-00712; 18-MJ-00713; 18-MJ-00715; 18-MJ-00716; 18-MJ-00718; 18-MJ-00719; 18-MJ-00720; 18-MJ-00721; 18-MJ-00723; 18-MJ-00724; 18-MJ-00751; 18-MJ-00797; 18-MJ-00798; 18-MJ-00996; 18-MJ-00997; 18-MJ-00998; 18-MJ-00999; 18-MJ-01001; 18-MJ-01427; and, 18-MJ-1863

**[PROPOSED] ORDER TO FILE
OVERSIZED BRIEFS**

For Good Cause Shown, the Court hereby grants the ex parte application, and orders that Claimant may file its over-sized brief entitled Notice of Motion and Motion to Vacate or Modify Seizure Warrants; Declarations of James Larkin, Michael Lacey, John Brunst, Scott Spear, Margaret Larkin, Troy Larkin, Ramone Larkin, and Antoinette Thomas with Exhibits.

Dated: August 3, 2018

Patrick J. Walsh
Honorable Magistrate Judge
United States District Court



1 Thomas H. Bienert, Jr., State Bar No. 135311
2 tbienert@bmkattorneys.com
3 Kenneth M. Miller, State Bar No. 151874
4 kmiller@bmkattorneys.com
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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 WESTERN DIVISION

17 **CV18-6742-RGK (MMA)**

18 **In the Matter of the Seizure of:**

19 Case No. 18-MJ-00722

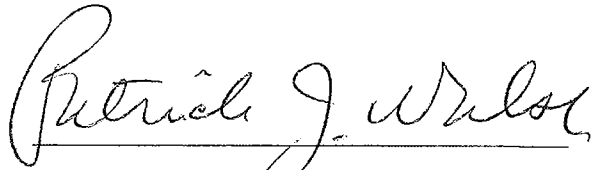
20 Any and all funds held in Republic
21 Bank of Arizona Account(s) xxxx1889,
22 xxxx2592, xxxx1938, xxxx2912, and,
23 xxxx2500.

24 **[PROPOSED] ORDER GRANTING JAMES**
25 **LARKIN'S APPLICATION TO FILE**
26 **UNDER SEAL PURSUANT TO LOCAL**
27 **RULE 79-5**

1 The Court has considered James Larkin's Application to File Under Seal Pursuant to
2 Local Rule 79-5, dated July 31, 2018. Based on the reasons set forth therein, the
3 Application is GRANTED.

4 IT IS SO ORDERED.

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7 Dated: 8/3/18



8 The Honorable Patrick J. Walsh
9 United States District Judge
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12 redacted versions to
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14 be filed by 8/8/18.
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CERTIFICATE OF SERVICE

I, Pamela S. Kralich, declare,

That I am a citizen of the United States and am a resident or employed in Orange County, California; that my business address is 903 Calle Amanecer, Suite 350, San Clemente, California 92673; that I am over the age of 18 and not a party to the above-entitled action.

That I am employed by a member of the United States District Court for the Central District of California and at whose direction I caused service of: **UNOPPOSED APPLICATION FOR ORDER UNSEALING IN THE MATTER OF SEIZURE OF: ANY AND ALL FUNDS HELD IN REPUBLIC BANK OF ARIZONA ACCOUNTS XXXX1889, XXXX2592, XXXX1938, XXXX2912, XXXX2500** on the interested parties as follows:

X **BY ELECTRONIC TRANSMISSION:** by electronically filing the foregoing with the Clerk of the District Court using its ECF System pursuant to the Electronic Case Filing provision of the United States District Court General Order and the E-Government Act of 2002, which electronically notifies said parties in this case:

John K. Kucera
Assistant U.S. Attorney
U.S. Attorney's Office
Asset Forfeiture Section
312 North Spring Street
Los Angeles, CA 90012
Email: John.Kucera@usdoj.gov

This certificate was executed on August 15, 2018, at San Clemente, California.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Pamela S. Kralich
Pamela S. Kralich

PROOF OF SERVICE